

AL-MAJALLA AL AHKAM AL ADALIYYAH (The Ottoman Courts Manual (Hanafi))

BOOK IX. INTERDICTION, CONSTRAINT AND PRE-EMPTION.

INTRODUCTION.

TERMS OF ISLAMIC JURISPRUDENCE RELATING TO INTERDICTION, CONSTRAINT AND PRE-EMPTION.

- 941. Interdiction consists of prohibiting any particular person from dealing with his own property. After interdiction, such person is called an interdicted person.
- 942. By permission is meant removing the interdiction and destroying the right of prohibition. The person to whom such permission is given is called the permitted person.
- 943. A minor of imperfect understanding is a young person who does not understand selling and buying, that is to say, who does not understand that ownership is lost by sale and acquired by purchase, and who is unable to distinguish obvious flagrant misrepresentation, that is misrepresentation amounting to five in ten, from minor representation. A minor who can distinguish between these matters is called a young person of perfect understanding.
- 944. Lunatics are divided into two classes. The first consists of persons who are continuously mad and whose madness lasts whole times. The second class consists of whose madness is intermittent, that is to say, persons who are sometimes mad and sometimes sane.
- 945. An imbecile is a person whose mind is so deranged that his comprehension is extremely limited, his speech confused, and whose actions are imperfect.
- 946. A prodigal person is a person who by reckless expenditure wastes and destroys his property to no purpose. Persons who are deceived in their business owing to their being stupid or simple-minded are also considered to be prodigal persons.
- 947. A person of mature mind is a person who is able to take control of his own property and who does not waste it to no purpose.
- 948. Constraint consists of wrongfully forcing a person through fear to do something without his consent. (*).(The translation of certain technical terms in this Article has been omitted as having no meaning for the English reader.)
- 949. constraint is divided into two classes. The first class consists of major constraint, whereby the death of a person or the loss of a limb is caused. The second consists of minor constraint whereby grief of pain alone is caused, such as assault or imprisonment.
- 950. Pre-emption consists of acquiring possession of a piece of property held in absolute ownership which has been purchased, by paying the purchaser the amount he gave for it.
- 951. The pre-emptor is the person enjoying the right of pre-emption.
- 951. The subject of pre-emption is real property to which the right of pre-emption is attached.
- 953. The subject matter of pre-emption is the property held in absolute ownership of the pre-emptor is virtue of which the right of pre-emption is exercised.
- 954. A joint owner of a servitude is a person who shares with another is right over property held in absolute ownership, such as a share in water, or a share in road.
- 955. A private right of taking water is a right of taking water from some flowing water reserved for a limited number of persons. But the right of taking water from rivers used by the public does not belong to this class.
- 956. A private road is a road from which there is no exit.

CHAPTER 1. MATTERS RELATING TO INTERDICTION.

SECTION 1. CLASSES OF INTERDICTED PERSONS AND MATTERS RELATING THERETO.

- 957. Minors, lunatics and imbeciles are ipso facto interdicted.
- 958. A person who is a prodigal may be interdicted by the court.
- 959. A person who is in debt may also be interdicted by the court upon the application of the creditors.
- 960. Any disposition of property such as sale and purchase on the part of interdicted persons referred to it in the preceding Articles, is invalid. Such persons, moreover, must immediately make good any loss caused by their own acts.
Example:- If A, even though he may be a young person of imperfect understanding, destroys property belonging to B, he must make good the loss.
- 961. Upon the court declaring a prodigal and a person in debt to be interdicted, the reason for such interdiction must be given, and announced in public.
- 962. It is not essential that the person whom the court intends to interdict should be present. He may validly be interdicted in his absence. Such person must, however, be informed of the interdiction; and the interdiction does not take effect until he has been so informed. Consequently, any contracts or admissions made by him up to that date are valid.
- 963. Provided he has not squandered his property, a person of dissolute character may not be interdicted solely by reason of his dissolute conduct.
- 964. Persons who cause injury to the public, such as an ignorant physician, may also be interdicted. In such cases, however, the object of the interdiction is to restrain them from practice, and not to prohibit them from dealing with their property.
- 965. No person who carries on business or trade in the market may be restrained from carrying on the same by reason of the fact that other persons carrying on such business or trade allege that their work is being ruined thereby.

SECTION II. MATTERS RELATING TO MINOR, LUNATICS AND IMBECILES.

- 966. A minor of imperfect understanding may not in any manner make any valid disposition of his property, even through his tutor assents thereto.
- 967. Any disposition of property entered into by a minor of imperfect understanding, which is purely for his own benefit, such as the acceptance of gift and presents, is valid, even though his tutor does not assent thereto. Any disposition of property, however, which is purely to his own disadvantage, such as bestowing a thing upon another by way of gift, is invalid, even though the tutor assents thereto. But in the case of contracts where it is not certain whether they will be for his benefit or disadvantage, such contracts are concluded subject to the permission of the tutor. The tutor has the option of giving or withholding his consent. Thus, if he thinks that it is to the advantage of the minor, he will give his consent, and not otherwise.
Example:- A minor of perfect understanding sells certain property without permission. The execution of the sale is subject to the assent of his tutor, even though he has sold it for a price which is greater than the value thereof, the reason being that the contract of sale is one where it is not certain whether it will be for his advantage or disadvantage.
- 968. Tutor may give a minor of perfect understanding a portion of his property on trial with which to engage in business, and if it turns out as a result that he is of mature mind, he may deliver him the balance of such property. Article
- 969. The repeated conclusion of contracts from which the intention to make profit may be inferred, amounts to permission to engage in business.

Example:- A tutor tell a minor to engage in business, or to buy and sell property of a certain nature. This amounts to permission to engage in business. But if he merely authorises him to conclude a single contract, as where he states that certain things are to be found in the market and tells him to buy them, or tells him to sell a certain thing, such act does not amount to permission to engage in business, but the tutor is considered to have employed such minor as agent in accordance with custom.

- 970. Permission given by the tutor may not be made subject to any condition as to time and place, or limited to any particular type of business.

Example:-

(1). The tutor gives permission to a minor of perfect understanding for a period of one day or one month. The minor has full and absolute permission, and may act for all time, until the tutor makes him interdicted.

(2) The tutor tells the minor to engage in trade in a certain market. The minor may engage in trade anywhere.

(3). The tutor tell the minor to buy and sell property of a particular sort. The minor may buy and sell any sort of property.

- 971. Permission may be given explicitly or by implication.

Example:- A minor of perfect understanding engages in business with the knowledge of his tutor, who makes no comment thereon and does not prohibit him from so doing. The tutor has given him permission by implication.

- 972. When permission is given to a minor by his tutor, such minor is considered to have arrived at the age of puberty in respect to the matters included in the permission. Contract such as those relating to sale and hire are valid.
- 973. A tutor who has given permission to a minor may later revoke such permission by making the minor interdicted, but the interdiction must take the same form as the permission. Example:- A tutor gives a general permission to a minor to engage in business. After this permission has become known to people in the market, he wishes to make the minor interdicted. The interdiction must in the same way be made general, and must be made known to the majority of the people in the market. It is not enough for him to be made interdicted in his own house in the presence of two or three persons.
- 974. The tutor of a minor in this connection is
 - (1) His father.
 - (2). If his father is dead, the guardian chosen, that is to say, the guardian chosen and appointed by the father during his lifetime.
 - (3). If the guardian chosen is dead, then the guardian appointed by him during his life time.
 - (4). The true ancestor, that is to say, the father of the father of the minor, or the father of the father of his father.
 - (5). The guardian chosen and appointed by such ancestor during his lifetime.
 - (6). The guardian appointed by such guardian.
 - (7). The court, or the guardian appointed, that is to say, the guardian appointed by the court.

Any permission given by a brother, or an uncle, or other relative who are not guardians, is invalid.

- 975. If the Court deems it in the interest of a minor that he allowed to dispose of property, and a senior tutor of such minor refuses to give permission, the Court may give the minor permission to do so, and no other tutor may under any circumstances make such minor interdicted.
- 976. In the event of the death of a tutor who has given permission to a minor, the permission which he has given becomes void. But the permission given by the Court does not become null and void by reason of the death or dismissal of the judge.
- 977. A minor who has been granted permission by the Court may be interdicted by such Court or by the successor of the judge who granted such permission. The father, or any other tutor, however, may not make the minor interdicted after the death or dismissal of such judge.
- 978. An imbecile is considered to be a minor of perfect understanding.
- 979. Lunatics who are continuously mad are considered to be minor of imperfect understanding.
- 980. Acts of disposition over property by lunatics who are not continuously mad, and performed during a lucid interval, are like acts of disposition over property performed by the sane person.
- 981. When a young person arrives at the age of puberty, there should be no undue haste in handing his property to him, but his capacity should be put to test. and if it turns out that he is of mature mind, his property should then be given to him.
- 982. If a young person who is not of mature mind arrives at the age of puberty, his property should not be handed to him and he should be prohibited as previously from dealing with the, until it has been proved that he is of mature mind.
- 983. If property is handed by a guardian to a minor before it has been proved that he is of mature mind, and such property is lost while in the possession of the minor, or the minor destroys the same, the guardian must make good the loss.
- 984. If property is handed to a minor upon his reaching the age of puberty, and if it is later proved that he is a prodigal, such person shall be interdicted by the Court.
- 985. Puberty is proved by the emission of seed during dreams, by the power to make pregnant, by, menstruation, and by the capacity to conceive.
- 986. The commencement of the age of puberty in the case of males is twelve years completed and in the case of females nine years completed. The termination of the age of puberty in both cases is fifteen years completed. If a male on reaching twelve have not arrived at the age of puberty, they are said to be approaching puberty until such time as they do in fact arrive at the age of puberty.
- 987. Any person who upon reaching the termination of the age of puberty, shows no signs of puberty, is considered in law to have arrived at the age of puberty.
- 988. If any young person who has not arrived at the commencement at the age of puberty brings an action to prove that he has in fact arrived at the age of puberty, such action shall not be heard.
- 989. If a male or female approaching the age of puberty admit in Court that they have arrived at the age of puberty, and the condition of their bodies shows that their admission is false, such admission shall not be confirmed. If, however, the condition of their bodies shows that their admission is true, their admission should be confirmed, and that their contracts and admissions are executory and valid. If such persons later state that at the time they made the admission they had not arrived at the age of puberty, and seek to annul any disposition they may have made over their property, no attention shall be paid thereto.

SECTION III. INTERDICTED PRODIGALS.

- 990. An interdicted prodigal is, as regards his civil transactions, like a minor of perfect understanding. The court alone, however, may be the tutor of the prodigal. The father, ancestor and guardians have no right of tutorship over him.
- 991. Any disposition of property by the prodigal after interdiction as regards his civil transactions are invalid. Any such dispositions made prior to the interdiction are the same as those of other people.
- 992. Any expenditure necessary for the interdicted prodigal or for those dependent upon him for support may be made from his own property.
- 993. If the interdicted prodigal sells property, such sale is not executory. If the court thinks that any benefit may be derived therefrom, however, it may validate such sale.
- 994. An admission made by an interdicted prodigal of a debt due to another is absolutely invalid, that is to say, any admission made in respect to property in existence at the time the interdiction was declared, or accruing thereafter, is without effect.
- 995. Any claim which any person may have against an interdicted prodigal shall be paid from the prodigal's property.
- 996. If an interdicted prodigal borrows money and uses it for his personal expenditure, and the amount thereof is not excessive, the Court shall repay such money from the prodigal's property. If it is excessive, however, the Court shall estimate the amount necessary for his maintenance and disallow the rest.
- 997. If the interdicted prodigal reforms, the interdiction may be removed by the Court.

SECTION IV. INTERDICTION OF DEBTORS.

- 998. If it is clear to the Court that the debtor is putting off paying his creditors, although he is able to pay, and the creditors ask the court to sell the property of the debtor and pay his debts therefrom, the Court shall prohibit the debtor from dealing with his property.

Should the debtor himself refuse to sell his property and pay his debts therefrom, the Court shall do so. The Court shall begin by selling those things which are most advantageous to the debtor.

The Court shall first deal with the cash assets and if these are not sufficient the merchandise, and if that is not sufficient, the real property of the debtor.

- 999. If the debtor is bankrupt, that is to say, if his debts are equal to or exceed his property, and the creditors fear that his property will be lost by trading, or that he will dispose of his property in fraud of his creditors, or that he will make it over to some other person, they may make application to the Court and ask for such person to be prohibited from dealing with his property or admitting a debt to some other person, and the Court shall then declare the debtor to be interdicted and shall sell his property and divide the proceeds among the creditors. One or two suits of clothes shall be left for the debtor. If the debtor's clothes, however, are expensive, and it is possible to do with less expensive clothes, such clothes shall be sold and a suit of cheap clothes shall be bought from the sum realised and the balance should be paid to the creditors. Again, if the debtor has a large country house and a smaller one is sufficient for him, such country house shall be sold and a suitable dwelling purchased from the sum realised, and the balance given to the creditors.
- 1000. Any expenditure necessary for the maintenance of an insolvent debtor during the period of his interdiction, or for persons dependent upon him for support, shall be paid from the debtor's property.
- 1001. Interdiction on account of debt only applies to property of the debtor in existence at the time the interdiction was declared. It does not apply to any property accruing to the debtor after the interdiction.
- 1002. The interdiction applies to anything likely to destroy the rights of the creditors, such as making gifts and bestowing alms and selling property at less than the estimated value. Consequently, any contracts entered into by a bankrupt debtor which are prejudicial to the rights of creditors, and other dispositions of property and gifts, are invalid in respect to property which existed at the time the interdiction was pronounced. They are valid, however, in respect to a debt relating to any property in existence at the time the interdiction was pronounced. They are valid, however, in respect to property acquired after the interdiction was pronounced. Any admission made to any other person in respect to a debt relating to any property in existence at the time the interdiction was pronounced, is invalid. After the interdiction has been removed, however, the admission is valid, and he is liable to make payment thereof. If he acquires property after the interdiction has been pronounced, an admission that he will make payment therefrom is executory.

CHAPTER II. CONSTRAINT.

- 1003. The person who causes constraint must be capable of carrying out his threat. Consequently, the threat of any person who is unable to put such threat into execution, is considered to be of no effect.
- 1004. The person who is the subject of constraint must be afraid of the occurrence of the event with which he is threatened. That is to say, he must have become convinced that the person causing the constraint would carry out his threat in the event of his failing to do what he was being constrained to do.
- 1005. Constraint is considered to be effective if the person who is the subject of such constraint performs the act he has been forced to do, in the presence of the person causing constraint, or of his representative. But if he performs such act in the absence of the person causing the constraint or of his representative, such act is not considered to have been caused by constraint since he has performed the act freely after the cessation of the constraint.

Example:- A brings constraint to bear on B to oblige him to sell property to C. B sells the property to C. in the absence of A or of his representative. The sale is considered to be valid and the constraint ineffective.

- 1006. Contracts of sale, purchase, hire, gift, transfer of real property, settlement in regard to property, admission, release, postponement of debt and renunciation of a right of pre-emption, if entered into as a result of effective constraint, are invalid, whether caused by major constraint or minor constraint. If the person subject to constraint ratifies the contract after the cessation of the constraint, such contract is valid.
- 1007. Major constraint applies not only to cases of formal dispositions of property as referred to above, but also to dispositions of property by conduct. Minor constraint, however, only applies to formal dispositions of property and not to dispositions of property by conduct. Consequently, if a person tells another to destroy the property of a certain person or he will murder him, or destroy one of his limbs, and the person who is subject of such constraint does destroy the property, the constraint is effective and the person responsible for the constraint alone may be called upon to make good the loss. But if a person tells another to destroy property of a certain person, or he will strike him or imprison him and he does destroy such property, the constraint is not effective, and the person destroying such property alone may be called upon to make good the loss.

CHAPTER III. PRE-EMPTION.

SECTION 1. DEGREES OF PRE-EMPTION.

- 1008. There are three causes of pre-emption.

(1). Where a person is the joint owner of the property sold itself. As where two persons jointly own an undivided share of real property.

(2). Where a person is part of a servitude in the thing sold. As where a person shares a private right of taking water or in a private road. (see 3rd at the end of Examples)

Examples:-

(1) One of several gardens each having shares in a private right of taking water is sold. Each of the owners of the other gardens obtains a right of pre-emption, whether they are adjoining neighbours or not.

(2) A house opening on to a private road is sold. Each of the owners of the other houses giving on to the private road obtains a right of pre-emption, whether they are adjoining neighbours or not.

But if a house taking water from a river which is open to the use of the public or the doors of which give on to a public road is sold, the owners of the other houses taking water from such river, or which give on to the public road, do not possess any right of pre-emption.

(3) Where a person is adjoining neighbour to the thing sold.

- 1009. The right of pre-emption belongs:
First, to the person who is a joint owner of the thing sold.
Second, to the person who is a joint owner of the servitude over the thing sold.
Third, to the adjoining neighbour.

If the first person claims his right of pre-emption, the others lose theirs. If the second person claims his right of pre-emption, the third person loses his.

- 1010. If a person is not a joint owner of the thing sold, or if, being a joint owner, he has renounced his right of pre-emption, and there is a person who has a share in a servitude in the thing sold, such person possesses a right of pre-emption. Should there be no person having a servitude in the thing sold, or, should there be one, and such person renounces his right thereto, the right of pre-emption accrues to the adjoining neighbour.

q Example:- A sells real property which he owns in absolute ownership to the exclusion of any other person, or A, being a joint owner of real property, sells his undivided jointly owned share therein and his partner relinquishes his right of pre-emption to such real property, and there is a person enjoying a private right of taking water who is part owner in a servitude over a private road. The right of pre-emption belongs to such person. Should there be no such person, or, in the event of there being such a person, that person relinquishes his right thereto, the right of pre-emption accrues to the adjoining neighbour.

- 1011. Where the upper portion, that is, the top storey belongs to one person and the lower portion, that is the lower storey of a building belongs to another, such persons are considered to be adjoining neighbours.
- 1012. Where a person is joint owner of the wall of a house, he is considered to be joint owner of such house. And if, while not being joint owner of the wall, the beams of his own house rest upon his neighbour's wall, he is considered to be an adjoining neighbour. The mere fact, however, that such person enjoys the right of putting the ends of his

beams upon such wall does not entitle him to be considered as a joint owner or as a person sharing in a servitude over such property.

- 1013. Should there be several persons enjoying a right of pre-emption, they are dealt with according to their numbers and not according to the number of parts, that is shares, which they hold.

Example:- A holds a half share in a house, and B and C hold a third and sixth share respectively. In the event of the owner of the half share selling such share to another person, and of B and C claiming the right of pre-emption, the half share is divided between them equally. B, the owner of the share of one third, may not claim to have a larger share granted to him on the basis of his prior holding.

- 1014. Where two classes of persons having joint shares in a servitude come together, the particular take precedence over the general.

Example:-

(1). Where a person who is the owner of a garden owned in absolute ownership, situated on land enjoying the right of taking water from a creek opening from a small river to which a right of taking water is also attached sells such garden, those persons having a right of taking water from the creek have a prior right of pre-emption. But if a person who is owner of a garden owned in absolute ownership situated on land enjoying the right of taking water from such river, sells his garden, all persons enjoying the right of taking water, whether from the river, or from the creek, possess a right of pre-emption.

(2). A person who is the owner of a house held in absolute ownership the door of which opens on to a blind alley which branches off from another blind alley, sells such house. Those persons the of whose houses open on to the branch blind alley possess a right of pre-emption. But if the owner of a house the door of which opens on to the principal blind alley sells such house, all persons having a right of way, whether over the principal or branch blind alley, possess a right of pre-emption.

- 1015. If the owner of a garden possessing a private right of taking water sells such garden without the right of taking water, those persons who share in the right of taking water cannot claim a right of pre-emption. The same principle is applied in the case of a private road.
- 1016. A right of taking water is preferred to a right of way. Therefore, if upon the sale of a garden in respect of which one person is the joint owner of a private right of taking water and another of a private right of way attaching thereto, the owner of the right of taking water is preferred to the owner of the right of way.

SECTION II. CONDITIONS ATTACHING TO THE RIGHT OF PRE-EMPTION.

- 1017. The property to which the right of pre-emption attaches must be real property held in absolute ownership. Therefore, no right of pre-emption can attach to a ship or other movable property, nor to real property which has been dedicated to pious purposes, nor to state land.
- 1028. The property on account of which the right of pre-emption is claimed must also be held in absolute ownership. Consequently, upon the sale of real property held in absolute ownership, the trustee or tenant of adjacent real property which has been dedicated to pious purposes cannot claim a right of pre-emption.
- 1019. No right of pre-emption may be claimed in respect to trees and buildings held in absolute ownership and situated on land dedicated to pious purposes, or on state land, since these are regarded as movable property.
- 1020. In the event of a piece of land held in absolute ownership being sold together with the trees and buildings standing thereon, such trees and buildings, since they follow the land, are also subject to the right of pre-emption. But if such trees and buildings alone are sold, no right of pre-emption can be claimed.
- 1021. Pre-emption can only be established by a contract of sale.
- 1022. A gift subject to compensation is regarded as a sale. Consequently, if a person who is the owner of a house in absolute ownership bestows such house upon another by way of gift subject to compensation and gives delivery thereof, this adjoining neighbour has a right of pre-emption.
- 1023. No right of pre-emption attaches to real property given to others in absolute ownership without payment, as in cases of gift without right of compensation, inheritance, or bequest.
- 1024. The person claiming the right of pre-emption must not have agreed to the sale which has been concluded, either expressly or by implication.

Examples:-

(1). If A, upon hearing of the conclusion of the sale expresses his concurrence therein, he loses his right of pre-emption, and he may not thereafter claim any such right.

(2). If A, after having heard of the conclusion of the sale, seeks to buy or to hire the property to which the right of pre-emption attaches from the purchaser, he loses his right of pre-emption.

Similarly, no right of pre-emption can be claimed by a person who has sold real property as agent for some other person. (see Article 100).

- 1025. The price must consist of property the amount of which is clearly ascertained. Consequently, there is no right of pre-emption in respect of real property transferred in absolute ownership for a price which does not consist of property.

Examples:-

(1). A sells a house which he owns in absolute ownership for the rent accruing from the letting of a bath. No right of pre-emption can be claimed because in this case the price of the house is not clearly ascertained, but in rent which is in the nature of an interest.

(2). There is no right of pre-emption in respect to real property held in absolute ownership and which is given as a marriage portion.

- 1026. The vendor must have divested himself of his absolute ownership in the thing sold. Consequently, in the case of a voidable sale, so long as the vendor retains the right to demand the return of the thing sold, there is no right of pre-emption. In the case of sale subject to an option, however, there is a right of pre-emption if the person possessing the option is the purchaser only. If the vendor has a right of option, however, there is no right of pre-emption until the vendor has divested himself of his right of option. But the existence of an option for defect or for inspection is no bar to the assertion of a right of pre-emption.
- 1027. There is no right of pre-emption upon the division of real property.

Example:- If the joint owners of a house jointly owned divide such house among themselves, the adjoining neighbour has no right of pre-emption.

SECTION III. THE CLAIM OF PRE-EMPTION.

- 1028. Three claims must be made in cases of pre-emption.
 - (1). A claim made immediately upon hearing of the sale;
 - (2). A claim made formally and in the presence of witnesses;
 - (3). A claim that the person alleging the right of pre-emption is entitled to bring an action and to be granted absolute ownership of the property.
- 1029. The person claiming the right of pre-emption must at the moment he heard of the conclusion of the sale, make a statement showing that he claims the right of pre-emption, as by saying that he is the person who has the right of the property sold subject to pre-emption, or that he claims the property by way of pre-emption. The claim is referred to as the claim made immediately upon hearing of the sale.
- 1030. After having made a claim immediately upon hearing of the sale, the person claiming the right of pre-emption must make a claim formally and in the presence of witnesses.

Thus, such person must say in the presence of two witnesses, and by the side of the property sold, that such and such a person has bought the real property in question, or, being by the side of the purchaser, must say that such person has bought such and such a piece of real property or, if the property sold is still in the possession of the vendor, must say by the side of the vendor that the latter has sold the real property in question to such and such a person, but that he has a right of pre-emption thereto, and that he calls such person to witness that he has made a further claim at that moment.

If the person claiming the right of pre-emption is in some distant place and is not in a position personally to make a claim formally and in the presence of witnesses, he may appoint a person as his agent to do so. If he is unable to find an agent, he may send a letter.

- 1031. After having made a claim formally and in the presence of witnesses, the person claiming the right of pre-emption must make a claim before the court and bring an action. This is called a claim to bring an action and to be granted absolute ownership of the property.
- 1032. If the person claiming the right of pre-emption delays in making his claim immediately upon hearing of the sale, he loses his right of pre-emption at the moment he hears of the sale, but behaves in a manner tending to show that he does not intend to pursue his claim such as dealing with some other matter, or engaging in conversation regarding a different subject, or if he goes away without making any claim to pre-emption whatsoever, such person loses his right of pre-emption.
- 1033. If the person claiming the right of pre-emption delays in making his claim formally and in the presence of witnesses for any time longer that is necessary for him to act, even though it be by letter, such person loses his right of pre-emption.
- 1034. If the person claiming the right of pre-emption delays without any legal excuse, as where he is in some other country, for more than one month in making a claim formally and in the presence of witnesses, such person loses his right of pre-emption.
- 1035. The tutor of an interdicted person may claim the right of pre-emption on behalf of such person. If a tutor fails to claim a right of pre-emption on behalf of a minor, such minor is not entitled to claim by way of pre-emption after he has reached the age of puberty.

SECTION IV. THE EFFECT OF PRE-EMPTION.

- 1036. The person who is entitled to a right of pre-emption becomes owner of the property to which such right attaches, either by the purchaser handing over such property as the result of mutual agreement, or by virtue of a judgement issued by the court.
- 1037. The act of taking over property held in absolute ownership, by way of pre-emption, is equivalent to buying such property in the first instance.

Consequently, rights which are valid in the case of original purchase, such as the option of inspection and the option for defect, are also valid in the case of pre-emption.

- 1038. If the person claiming the right of pre-emption dies after having made both the immediate and formal claims, but without becoming the owner of the property to which the right of pre-emption attaches owing to such property having been handed over by the purchaser either by way of mutual agreement or as the result of a judgement of the court, the right of pre-emption is not transferred to his heirs.
- 1039. If the person claiming the right of pre-emption sells the property by virtue of which he holds a right of pre-emption after having made the two claims a set out above, but without having become owner of the property to which the right of pre-emption attaches, such person loses his right of pre-emption.
- 1040. If a piece of real property held in absolute ownership adjoining property subject to the right of pre-emption is sold before the person claiming the right of pre-emption attaches as set out above, such person cannot claim a right of pre-emption in the second piece of real property.
- 1041. Pre-emption does not admit of division. Consequently, the person claiming the right of pre-emption has no right to reject a portion of the property to which the right of pre-emption attaches and take the rest.
- 1042. None of the holders of a right of pre-emption may bestow their right upon other holders by way of gift. If they do so, their right of pre-emption is lost.
- 1042. If any holder of a right of pre-emption relinquishes such right prior to the judgement of the court, any other person possessing a right of pre-emption may take the whole of the real property to which the right of pre-emption attaches. If any holder of a right of pre-emption relinquishes his right of pre-emption after judgement by the court, such person's right does not accrue to any other person holding a right of pre-emption.
- 1044. If the purchaser adds something to the building to which the right of pre-emption attaches, such as paint, the person possessing the right of pre-emption has the option either of leaving such building or of taking it and paying the price of such addition, together with the price of the building. If the purchaser has erected buildings upon the real property to which the right of pre-emption attaches, or has planted trees thereon, the holder of the right of pre-emption has an option of leaving such real property, or of taking it and paying the price thereof together with the value of such buildings and trees. If he does not do so, he cannot force the purchaser to pull down the buildings and uproot the trees.

PROMULGATED BY ROYAL IRADAH, 16TH REBI UL AKHIR, 1290.